

TAM:DBS:mel:2000V00753

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

M. ASH-SHARIEF AL'ASKARI,	:	
Plaintiff	:	Civil No. 1:CV-00-1449
	:	(Caldwell, J.)
v.	:	(Smyser, M.J.)
	:	
KATHLEEN HAWKES, et al., ,	:	Electronically Filed
Defendants	:	

BRIEF IN OPPOSITION TO PLAINTIFF'S
MOTION FOR RECONSIDERATION OF MOTION FOR COUNSEL

Introduction

M. Ash-Sharief Al'Askari, a former inmate once incarcerated at FCI Allenwood, filed this Bivens action in the Middle District of Pennsylvania against four BOP employees alleging violations of his due process rights and a denial of access to the courts. At this point in the case, the only remaining issue is an access to courts claim against the sole remaining defendant, BOP counsel Doug Goldring.

On August 13, 2003, Al'Askari filed a motion for appointment of counsel claiming he was without counsel during his deposition and that it is unfair for him to be unrepresented and for the defendant to be represented. The motion was denied on September 19, 2003, and Al'Askari now seeks reconsideration of the Court's

Order.¹ Defendant requests that the motion be dismissed as untimely.

Argument

Al'Askari seeks reconsideration of a non-dispositive Order issued more than three months ago. However, whether construed as a motion for reconsideration under Local Rule 7.10, or as an appeal to the District Court under Local Rule 72.2, his motion is untimely.²

Local Rule 7.10 provides that, "[a]ny motion for reconsideration or reargument shall be filed within ten (10) days after the entry of the judgment, order or decree concerned." See M.D. Pa. Local Rule 7.10. Similarly, under Local Rule 72.2, Al'Askari could have appealed the Magistrate Judge's Order denying his non-dispositive pretrial motion "within ten (10) days after issuance of the magistrate judge's order . . ." See M.D. Pa. Local Rule 72.2. In any event, Al'Askari had until October 3, 2003, to seek reconsideration or to appeal the denial of counsel. In that the time for doing so expired nearly three

¹Al'Askari seeks appointment of counsel "to assist the pro se plaintiff in Discovery, . . ." See Doc. 98, p. 5. However, the deadline for discovery expired on December 15, 2003, without a request that the deadline be extended.

²Since the Order is not a final judgment, it would appear that Al'Askari could not seek relief under Federal Rules of Civil Procedure 59 or 60. Moreover, Al'Askari has not stated sufficient grounds for relief under Rule 60.

months ago, his motion should be dismissed without a merits analysis.³

Conclusion

For the reasons stated above, it is respectfully requested that the motion for reconsideration be dismissed.

Respectfully submitted,

THOMAS A. MARINO
United States Attorney

s/ D. Brian Simpson
D. BRIAN SIMPSON
Assistant U.S. Attorney
Atty. I.D. No. OH 71431
316 Federal Building
240 West Third Street
Williamsport, PA 17703
Telephone: 717-221-4482
Facsimile: 717-221-2246

Dated: December 30, 2003

³The allegations in Al'Askari's motion against defense counsel are baseless and completely devoid of merit. Therefore, counsel for defendant will not address the merits of the motion unless directed to do so by the Court.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

M. ASH-SHARIEF AL'ASKARI,	:	
Plaintiff	:	Civil No. 1:CV-00-1449
	:	(Caldwell, J.)
v.	:	(Smyser, M.J.)
	:	
KATHLEEN HAWKES, et al., ,	:	Electronically Filed
Defendants	:	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion to be competent to serve papers.

That on December 30, 2003, she served a copy of the attached

**BRIEF IN OPPOSITION TO PLAINTIFF'S
MOTION FOR RECONSIDERATION OF MOTION FOR COUNSEL**

by placing said copy in a postpaid envelope addressed to the person(s) hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at Williamsport, Pennsylvania.

Addressee:

M. Ash-Sharief Al'Askari
5737 N. 12th Street
Philadelphia, PA 19141

s/ Michele E. Lincalis
MICHELE E. LINCALIS
Paralegal Specialist